

January 4, 2007

Commission's Secretary  
Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Room TW-A325  
Washington, DC 20554

Re: Petitioners Request For Extension To Reply  
WC Docket No. 06-210  
CCB/CPD 96-20

To Whom It May Concern:

- 1) Larry G Shipp and Combined Companies, Inc. (CCI), makes these supplemental comments with regard to petitioners filing for an extension of time to reply in the above captioned proceeding.
- 2) We have every expectation that the FCC will consider, in total, the entirety of the petitioners Request For Declaratory Ruling, and that the FCC will surely agree that it is the court's expectation, as well as others who have filed comments in support of petitioners Declaratory Ruling(s) that the FCC should address them and resolved them all at the same time.
- 3) The FCC is the only entity that can review the undisputed facts, tariff(s) and actions of AT&T who offered for subscription various plans which were subscribed to by CCI and the petitioners, and, which are directly governed by AT&T filed FCC Tariff(s). Therefore, it must be the FCC who determines the appropriateness of the actions of the parties in compliance with their obligations to each other under the tariffs.
- 4) However, and notwithstanding our belief that the FCC will act and rule on ALL petitioners request for Declaratory Ruling, and we are today prepared to

file by January 17, 2007 or reply comments, we will not object to petitioners request to have a 30 day or less extension granted for the express purpose of preparation of its rely filings. However, should the petitioner wish to add and/or expand, combine or otherwise modify its initial request for Declaratory Rulings, to include what we believe to be issues outside of the present Declaratory Ruling Request (and Winback, et al's subsequent initial request for extension), to include items such as tax issues attributed to the Internal Revenue Service and State of Florida, both myself and CCI would most respectfully wish to provide additional comment wherein we may or may not file objection to these considerations.

- 5) Just to review, as to what is before the FCC presently. Petitioners have asked the FCC to determine the issues under section 2.1.8 of AT&T's Tariff No. 2 as well as any other issue left open by the D.C. Circuit's Opinion in *AT&T Cop. v. FCC*, 394 F.3d 933 (D.C. Cir. 2005).
- 6) And in that regard, any fair minded reading of the request for Declaratory Ruling filed by the petitioner can not escape the fact that ALL the rulings and interpretations sought by the petitioner can only be resolved by the FCC at this time as they involve rights and responsibilities of the parties as covered by AT&T filed tariff(s).
- 7) In reading the FCC's Oct. 17<sup>th</sup> 2003 Declaratory Ruling the following excerpts are pertinent in that it stresses that Declaratory Relief is based upon **tariff language that is undisputed.**

We disagree, however, with AT&T's contention that *all* of the issues upon which petitioners seek declaratory relief – or the court's primary jurisdiction referral (*See* Opposition at 9.)– involve disputed material issues of fact. (See Opposition at 14.) **The language of the tariff is undisputed.** It is undisputed that petitioners requested that AT&T move end-user traffic from CCI to PSE and it is undisputed that AT&T did not effect that move. **These undisputed facts form the basis for our grants of declaratory relief.**

8) The FCC is clearly aware also of the undisputed fact that AT&T inflicted shortfall charges on CCI end users far in excess of the cap imposed by the tariff. The FCC itself saw these “bills” when complaints were filed by angry end-users at the FCC, and other state and federal agencies, against CCI. These bills show beyond any doubt that shortfall charges were applied, appropriate or not, that were far in excess of the clear tariff language, which specified that AT&T could ONLY REDUCE THE DISCOUNT! Therefore, AT&T, IN FACT, did not follow its tariff(s), and in doing so, created a illegal remedy which they CAN NOT be allowed to rely upon.

9) Petitioners cited a quote that AT&T counsel made to the District Court in which AT&T counsel declared to the District Court that there were **no disputed facts**, and we agree.

The FCC Declaratory Ruling Stated: Page 13 footnote 87

In accordance with the discretion allowed us in a declaratory proceeding, moreover, we see no need to attempt to resolve the disputed issues through a formal complaint proceeding before the Commission, as AT&T proposes. **Given our conclusion that AT&T violated section 203 of the Act, it is unclear what additional fact-finding on these issues is necessary.** Assuming that further inquiry is appropriate, efficiency favors their resolution in the district court where the evidentiary record already has been developed. That is consistent with petitioners' original choice of forum for this dispute,

with petitioner's objective in this proceeding, *see* Reply at i ("Any factual issues which need to be addressed in order to apply the tariff, after the tariff is interpreted by the Commission, can be addressed by the District Court, which has already compiled an extensive factual record in this case"), 14, and with the court's primary jurisdiction referral. The district court proceeding is still pending and the parties have presented evidence in that forum, *inter alia*, in the course of a two-day hearing.

10) All the Declaratory Rulings sought by the petitioners should be considered and resolved. And, notwithstanding the less than 30 day delay sought by the petitioners, the FCC should rule on the petitioners request on an expedited basis

Respectfully submitted this date,

Larry G Shipp and Combined Companies, Inc.

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Larry G Shipp